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CITATIONS

CASE:

United States v. *Lane*, No. 499, O.T. 1952 4

STATUTE:

22 U.S.C. 3116 2

In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 500

UNITED STATES OF AMERICA, *Petitioner*

v.

ONE 1948 PLYMOUTH SEDAN, ENGINE NO. P15-590266, SERIAL NO. 11842034, REGISTERED TO FRED MOORE, 506 WASHINGTON AVENUE, PHILADELPHIA, PENNSYLVANIA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the Court of Appeals for the Third Circuit affirming the dismissal of a libel filed by the petitioner for the forfeiture of a car alleged to have been used in violation of the internal revenue liquor laws.

OPINION BELOW

The opinion of the Court of Appeals (R. 26-29) is reported at 198 F. 2d 399.

JURISDICTION

The judgment of the Court of Appeals was entered July 17, 1952 (R. 30). On October 6, 1952, Mr. Justice Burton extended the time for filing a petition for a writ of certiorari to December 13, 1952 (R. 33). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether an automobile used to transport the operator of an illegal still to and from the still is subject to forfeiture as property used in the violation of the internal revenue laws.

STATUTE INVOLVED

26 U.S.C. 3116 provides as follows:

> It shall be unlawful to have or possess any liquor or property intended for use in violating the provisions of this part, or the internal-revenue laws, or regulations prescribed under such part or laws, or which has been so used, and no property rights shall exist in any such liquor or property. A search warrant may issue as provided in Title XI of the Act of June 15, 1917, 40 Stat. 228 (U.S.C., Title 18, §§611-633), for the seizure of such liquor or property. Nothing in this section shall in any manner limit or affect any criminal or for-

feiture provision of the internal-revenue laws, or of any other law. The seizure and forfeiture of any liquor or property under the provisions of this part, and the disposition of such liquor or property subsequent to seizure and forfeiture or the disposition of the proceeds from the sale of such liquor or property, shall be in accordance with existing laws or those hereafter in existence relating to seizures, forfeitures, and disposition of property or proceeds, for violation of the internal-revenue laws.

STATEMENT

On June 18, 1951, the petitioner filed its libel of seizure and forfeiture against the respondent automobile, alleging that the automobile had been used and intended for use in violation of the Internal Revenue Laws relating to distilled spirits (R. 1-4). One Fred Moore, who claimed to be the owner of the automobile filed a defense to the libel and counterclaim for the car (R. 4-6).

On trial, it was shown that Moore was an operator of an unregistered still located in the town of Glassboro, New Jersey, although he did not own it (R. 13). It was also shown that about twice a week for a period of six weeks he had driven the car from his home in Philadelphia to the still in Glassboro in order to operate the still (R. 11, 12, 14). It did not appear that he ever carried any raw material or finished product in the car (R. 14). It was stipulated that the dis-

tance from Moore's home to the still was approximately 17 to 20 miles (R. 13). It was also shown that there was both bus and train transportation from Philadelphia to Glassboro, and that the bus came within two squares of the still (R. 15-16).

On the basis of this evidence the District Court ruled in favor of the libellee-claimant. It stated that "being of the opinion that the automobile in question was used solely for the personal transportation of its owner who had other convenient means of transportation and there being no evidence that the owner of the automobile had at any time or intended in the future to transport other persons to work upon the still or transport any liquor materials or supplies for use in connection with said still [the] government failed to make out a case * * *" (R. 22).

The Court of Appeals unanimously affirmed the District Court's judgment (R. 30), and echoed its view of the statute, explicitly recognizing, however, that its view was in conflict with that of the Sixth Circuit (R. 28-29).

REASONS FOR GRANTING THE WRIT

The present case raises substantially the same questions which are raised in the petition for writs of certiorari to the Tenth Circuit in *United States* v. *Lane, No. 499,* O.T. 1952, filed concurrently herewith, and reference is hereby made to that petition for reasons for granting the writ in the instant case.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari be granted.

WALTER J. CUMMINGS, JR.,
Solicitor General.

DECEMBER 1952.

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